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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	))))	MM Docket No. 92-266

OPPOSITION OF THE NATIONAL CABLE TELEVISION ASSOCIATION, INC. TO PETITIONS FOR RECONSIDERATION

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SUMMARY

NCTA opposes the Petitions for Reconsideration filed by the National Association of Telecommunications Officers and Advisors (NATOA) and the Georgia Municipal Association (GMA). NATOA's Petition seeks at every turn to change the rules adopted in the Thirteenth Reconsideration Order in order to provide local franchising authorities with increased opportunities to unreasonably delay wholly legitimate basic rate adjustments. The Commission should not adopt these proposed unwarranted modifications.

The GMA Petition attacks the Commission's decision to eliminate its "rate in play" policy. But the FCC's new policy correctly recognizes the need for operator certainty with respect to their rates. In addition, the 1992 Cable Act limits the FCC's ability to adopt the rule changes that GMA seeks.

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Rate Regulation	)	

OPPOSITION OF THE NATIONAL CABLE TELEVISION ASSOCIATION, INC. TO PETITIONS FOR RECONSIDERATION

The National Cable Television Association, Inc. ("NCTA"), by its attorneys and pursuant to Section 1.429(f) of the Commission's rules, hereby submits its Opposition to the Petitions for Reconsideration filed by the Georgia Municipal Association ("GMA") and the National Association of Telecommunications Officers and Advisors ("NATOA") in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States. NCTA's members include owners and operators of cable television systems serving over 80 percent of cable households in the United States, as well as over 60 program networks. NCTA participated in the rulemaking proceeding leading to adoption of the rules about which GMA and NATOA now complain.

INTRODUCTION

In the Thirteenth Reconsideration Order,[1] the Commission adopted an optional method for cable operators to adjust rates on an annual basis to reflect cost increases and decreases. The Commission in so doing recognized that the existing quarterly rate adjustment system can impose significant administrative burdens on cable operators and government officials. It also causes subscriber confusion and dissatisfaction as operators are put in a regulatory posture where they must file for increases more frequently than they might otherwise desire in order to avoid forfeiting the right to recover altogether certain cost increases.[2] In addition, the Commission recognized that filing under the existing system could entail significant delays in cost recovery for operators.[3]

The new rules were designed to streamline the rate review process, and to cure some of these difficulties. Operators no longer are forced to incur costs in the quarter before rates may be adjusted to recover these costs. They may instead project certain cost increases that will occur over the year. Franchising authorities have 90 days to review those changes. At the end of that 90 day review period, the new rate will go into effect unless the franchising authority denies the increase, in whole or in part. Cities may no longer unilaterally toll rate increases, a practice which had caused operators in numerous cases to unfairly lose the right to recover wholly legitimate costs that had already been

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1 Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266 (rel. Sep. 22, 1995) (hereinafter "Thirteenth Reconsideration Order").

2 Thirteenth Reconsideration Order at ¶5.

3 Id. at ¶6.

incurred. While operators are generally prohibited from taking increases in the ordinary course more frequently than yearly, the rules give operators flexibility to postpone rate increases without fear of losing the ability to recoup certain costs at a later date. Finally, the rules protect subscribers against paying unreasonable rates by requiring operators to "true up" their costs to account for any differences between projected and actual costs, and to reflect over-or under-estimations in their next rate filing.

The NATOA Petition for Reconsideration seeks to eviscerate these changes in numerous respects. Claiming that the "annual rate review process adopted by the Commission fails to achieve [its] objectives"[4], NATOA seeks a return to a system that places unnecessary burdens on cable operators and provides increased opportunities for unreasonable franchising authority delays in approving basic rate filings. The Commission should reject these proposed modifications to the new rules.

The GMA Petition attacks the Commission's decision to eliminate its policy of reviewing an entire rate where a complaint about a rate change has been filed (the so-called "rate in play" issue). The policy adopted in the Thirteenth Reconsideration Order, however, correctly recognizes the need for operator certainty that its underlying rate is not subject to review if a subscriber or franchising authority has not filed a complaint within a reasonable period of time after a rate change. Moreover, the Cable Act imposes limits on the Commission's ability to review anything other than the rate adjustment about which a complaint is properly filed. Therefore, as described below, the Commission should not adopt the modification that GMA proposes.

[4] NATOA Petition at 2.

ARGUMENT

I. NATOA'S PETITION SHOULD BE DENIED

NATOA proposes a laundry list of changes that they seek. These changes would not protect subscribers from unreasonable rates. Rather, they would allow local authorities to continue to delay or deny an operator's ability to take wholly legitimate rate increases reflecting their higher cost of doing business. We address each of these unwarranted proposed changes below.

A. Operators Should Not Be Forced to File Annually

Under the newly-adopted rules, operators may file for rate increases at intervals longer than one year. While operators cease to accrue interest on their undercharges after a year, they do not lose the ability to recover costs that they have incurred.[5] At the same time, operators must file annually to reflect any cost decreases that would necessitate a rate reduction.[6]

NATOA urges that the FCC change its rules to force operators to raise their rates annually. NATOA expresses concern that operators might charge subscribers "unrealistically low rates".[7] (This kind of objection on its face is not a little ironic).

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5 NATOA incorrectly asserts that the "FCC rules permit an operator to recoup such undercharges only during the next annual adjustment year." NATOA Petition at 5. The rules in fact do not impose any time frame on the recovery of undercharges. 47 C.F.R. §76.922 (e)(3)(iii) (recognizing that operator may choose not to recover accrued costs at time of next annual rate adjustment).

6 47 C.F.R. §76.922(e)(3)(ii).

7 NATOA Petition at 5 n. 3.

When operators later seek to recover these costs through increased rates, NATOA fears that subscribers might suffer what it terms "rate shock".

NATOA's use or lose philosophy runs counter to subscriber interest (i.e., maintaining lower rates for as long as possible) and the wholesome goal of allowing market forces to determine rates, so long as they remain at or below the allowable rate cap. The timing and extent of rate increases goes to the essence of cable operator business and marketing decisions. Since subscribers are fully protected against paying unreasonable rates, there is simply no justification for this new level of micromanagement of cable operators' rate decisions that NATOA seeks.

Unlike NATOA, the Commission recognizes that there may be valid business reasons why an operator might choose to delay increasing its rates beyond a year. At the same time, the Commission's rules are predicated on the idea that operators should not lose the opportunity to recover certain costs. And subscribers are protected in this case because operators may not collect interest on these costs after 12 months have gone by.

NATOA maintains that the annual filing requirement "also would reduce the administrative burden of reviewing the form since the Commission and franchising authorities would be able to review data on a yearly basis when it is still fresh and verifiable."[8] But it is difficult to see how requiring a city to review a rate filing at intervals in excess of a year would be more burdensome administratively than reviewing filings on a more frequent basis. Rather, requiring operators to file even when they do not wish to change their rates simply increases the paperwork burdens on operators and local

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[8] Id.

authorities alike. In any event, the Commission has already more than adequately accommodated NATOA's concern by requiring reporting on the Form 1240 to correspond to 12 month periods. This should solve any legitimate concerns regarding franchising authority "confusion" in their rate review.

NATOA next claims that "[o]nce a cable operator chooses the annual rate adjustment option, the Commission should not permit operator to switch back to a quarterly review period at a later date."[9] NATOA asserts that this rule change is necessary to "reduce subscriber confusion", and to "eliminate the possibility that a cable operator may 'game' the review period options to impose rate increase beyond what would otherwise be permissible under the Commission's rules."[10] These contentions are entirely baseless.

NATOA fails to provide a single example or advantage to support its assertion that operators can or will seek to "game" the system by switching methodologies. Their failure to do so is not surprising, since the Commission already has rules in place to guard against any such behavior. An operator changing from the annual to quarterly system "may not return to a quarterly adjustment using a Form 1210 until a full quarter after it has filed a true up of its annual rate on a Form 1240 for the preceding filing period."[11] Since a true-up is required, there is no way for an operator to "game" the system to obtain more of an increase than that to which it is entitled.

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[9] Id. at 7.

[10] Id. at 7-8.

[11] 47 C.F.R. §76.922(c)(ii).

In addition, an operator that had filed under the annual system could not take another rate increase during that year. Subscribers will hardly be "confused" by a quarterly rate increase that occurs a year after their last increase.

Operators, it is hoped, will find that the annual filing option meets their needs. However, at this stage in the process, the Commission has wisely opted to preserve a measure of flexibility for operators who discover that the annual method is inferior for their purposes to the existing quarterly system. Therefore, we urge the Commission to reject NATOA's baseless effort to further restrict operators' options.

B. The Commission Should Retain Its 15 Day Rule

In the course of dealing with Form 393, 1200 and 1210 basic rate reviews, a problem has arisen when local franchising authorities ("LFA") have failed to inform operators of the status of their rate review at the end of the review period. Operators, therefore, have remained in limbo as to whether or not their rates have been determined to be reasonable by the franchising authority.

The new rules help alleviate this uncertainty. Local franchising authorities have 90 days in which to conduct their review. But to provide some certainty to the operator regarding whether a local authorities' review is still continuing at the end of that period, the Commission imposes the minimal requirement that, in response to a request from an operator, a franchising authority within 15 days must tell the operator whether it is continuing to review its rates. Failure to respond within that time frame means that the franchising authority loses its ability to order a prospective rate reduction and refund.

NATOA, in a fit of hyperbole, calls this 15 day response requirement a "draconian measure" that can produce "unconscionable consequences".[12] NATOA claims that a cable operator might make its inquiry when there is no one around to answer it, and a city would therefore unfairly forfeit its rights. This is hardly likely to be the case -- franchising authorities are entitled to advanced notice of when rate increases are scheduled to go into effect, and under the rules may reject those dates for good cause.[13] Thus, it is unlikely that the review period will end at a time where no one -- either the franchising authority or its "designee" -- can respond to a simple inquiry.

In any case, the basic assumption is that 90 days suffices to complete the review. The Commission could have required the LFA to affirmatively provide notice that 90 days is not sufficient. Instead, the rule imposes a burden on the operator to affirmatively inquire about the status of the review. Then, and only then, is the LFA under a duty, and the duty is only to say, "We need more time", hardly an "unconscionable" arrangement.

In any event, NATOA's proposed "fix" to this alleged problem is ludicrous. NATOA urges that the Commission adopt a rule that "presumes that a franchising authority will issue a rate decision after the 90-day period, unless the franchising authority at the end of such period indicates that it will not issue a rate order."[14] But such a rule would defeat the whole purpose. Operators would remain in limbo, unsure whether and when their rates might be approved.

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[12] NATOA Petition at 8.

[13] 47 C.F.R. §76.922(e)(1).

[14] Id. at 10.

Indeed, if the Commission is inclined to make changes in this provision, it should reverse the presumption that NATOA seeks. Instead, a cable operator's rates would be presumed reasonable, and not subject to refund or prospective rate reduction, if a franchising authority has not affirmatively taken action to preserve its right to order refunds by issuing an accounting order or some type of written indication of its intent to continue to review the filing.

C. The Existing Rate Adjustment Mechanism Adequately Protects Subscribers Against Payment of Unjustified Rates

NATOA asks that the Commission require operators to "refund to subscribers any overcharges accrued during an annual adjustment period."[15] NATOA claims that such a rule change is necessary "to ensure that cable operators are not permitted to overcharge subscribers in perpetuity."[16] This argument is specious and does not justify a rule change.

First, under the current rules, an operator must take any overcharges into account, with interest, when it next adjusts its rates.[17] Subscribers, therefore, are fully protected against any alleged overcharges since the rules ensure that they are made whole.

Second, NATOA posits that operators will have an incentive in the next adjustment year to continue to overcharge subscribers to make up for the lost overcharge from the previous year. This argument strains credulity. Local franchising authorities have 90 days in which to review cable operators' basic rate filings prior to their effectiveness. Any

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15 Id. at 10-11.

16 Id. at 11.

17 47 C.F.R. §76.922(e)(3)(ii).

operator that overcharged subscribers in the previous year would have to account for that in a true-up filing that would be examined by local authorities; subsequent projections must be made based on costs that are "reasonably certain and reasonably quantifiable".[18] A local franchising authority would have ample opportunity to detect any overcharges under the existing system and deny the increase.

Finally, requiring operators to issue refunds to subscribers imposes unnecessary costs on operators. These costs can be avoided, while still insuring that subscribers are made whole, under the existing approach.

NATOA also errs in claiming a need for a LFA to have an unlimited time in which to order a refund. Under existing rules, a local authority may order refunds for a one year period from the date an operator filed for its new rate. Therefore, a local authority could take virtually the entire period the new rate is in effect to review the legitimacy of that rate. At the end of that period, if a refund has not been ordered, a franchising authority still has the opportunity to review an operators' true-up filing in the context of its next rate adjustment, and take into account any overcharges when approving the new rate. These procedures are more than adequate to protect against any unlawful overcharges.

Prolonging the refund period would serve no legitimate purpose. The Commission explained that it set a limit of a 12 month period on refunds "because we believe that one year should provide ample time for review, and because operators need to have certainty with respect to their liability for refunds and whether their rates will be permitted to

[18] 47 C.F.R. §76.922(e)(2)(ii).

remain in effect."[19] Under these circumstances, there is simply no reason to revise the rule, or to force operators to face uncapped refund liability for even longer time periods. A local franchising authority, in order to be certified to regulate basic rates, must attest to the fact that it has the legal authority and personnel to administer the rate rules.[20] It is hardly burdensome to expect that, given such a certification, a local authority should be in a position it to complete its review of an annual filing at least before the next rate increase is scheduled to take effect a year later.

For the same reason, the Commission should not adopt NATOA's proposal that it have an unlimited time in which to issue its rate order. NATOA argues that many franchising authorities are still awaiting an FCC decision on appeal of their rate orders regarding the underlying Form 393 and 1200 rates.[21] NATOA maintains that cities should not be forced to issue rate orders while these appeals are pending.

Avoidance of unnecessary and duplicative appeals is certainly a reasonable goal. This could be accomplished if the Commission can expeditiously resolve appeals. But assuming that such action is not possible, NATOA's solution -- to allow local authorities to keep rate decisions open indefinitely -- would compound the problem. Operators would not have a decision on the permissibility of their new rates, and therefore would not have a local decision appealable to the Commission. Instead, they would be in permanent limbo as to whether their rates were acceptable or not. This is precisely the result that the

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[19] Thirteenth Reconsideration Order at ¶92.

[20] 47 C.F.R. §76.910(b).

[21] NATOA Petition at 14.

Commission wisely sought to avoid in adopting the 12 month provision. The existing rule should be maintained.

D. The Commission Should Not Allow Local Authorities to Toll Rate Adjustments for Reasons Other Than Facially Incomplete Filings

The current rules strictly limit the circumstances under which LFAs may toll annual rate adjustment filings. Tolling is only permissible where a filing is "facially incomplete" -- that is, "filings which do not have all the information required by the form."[22] The Commission has carefully distinguished facially incomplete filings "from other filings which contain all of the required information, but about which franchising authorities seek clarifying or substantiating information."[23] Filings may not be tolled under the latter circumstances.

In an effort to greatly expand this narrow exception, NATOA seeks to completely change the meaning of "facially incomplete". It argues that the "Commission should make clear that a form is facially incomplete if it does not include supporting calculations or other documentation in support of the entries on the form."[24] The Commission should deny this transparent attempt to create unwarranted opportunities to further delay operators' lawful rate adjustments.

Certain local franchising authorities have attempted to use their authority in just such a fashion in reviewing Forms 393, 1200 and 1210 filings. Such an open-ended rule

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22 Thirteenth Reconsideration Order at ¶95.

23 Id.

24 NATOA Petition at 15.

would only serve to create additional opportunities for mischief in the context of the Form 1240 review. The Commission's Form 1240 carefully delineates that information that is necessary in order to support a completed filing. No modifications to the rule are warranted.

E. The Commission Should Adhere To Its Review Period for Amendments

The current rules require operators to file amendments to pending Form 1240 filings at least 30 days prior to the rate going into effect.[25] This should be more than adequate time for local authorities to examine these filings.

NATOA nonetheless claims that additional time will be needed in "many instances." It therefore urges the Commission to "amend its rules to permit a franchising authority an additional 90 days to review an amended filing that the franchising authority, in its sole discretion, finds contains substantial changes from the initial filing ...."[26] Such a rule change again reflects local authorities' agenda of delaying rate increases as long as possible, and should not be adopted by the Commission.

NATOA claims that such a rule is justified because otherwise, operators would have an incentive to file insufficient Form 1240s merely to start the 90 day period running, and then wait to file their "real" Form 1240 for another 60 days. But this is hardly likely to be the case. As described previously, an operator must file a facially complete Form 1240 in order to avoid having the 90 day period tolled. If the Form 1240 is incomplete, the 90 day review period would not be running.

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[25] 47 C.F.R. §76.933(g)(1).

[26] Id. at 17 -18.

Moreover, changes may occur over the course of the 90 day period as a result of the fact that review period is as long as it is.[27] Prolonging the review period by an additional 90 days if an amendment is filed will only exacerbate this problem. For all these reasons, the Commission should not extend the period for reviewing amendments to Form 1240 filings.

F. The Commission Should Maintain Its Interest Rate for Franchise Fee Refunds

Section 76.942(f) of the FCC's rules requires that, in some cases, franchising authorities must pay interest on franchise fee overcharges. The interest rate is presumptively set at 11.25%. NATOA claims that the interest rate for franchise fee refunds should be the same as that for cable operator refunds, which are based on the IRS interest rate.

NATOA claims that because operators pay interest on refunds at a lower rate, a cable operator would earn a profit on the amount it has overcharged subscribers.[28] But this argument assumes that an operator and a franchising authority pay interest over the same time period. That is not the case. Instead, operators must pay interest on refund amounts for the entire period of time for which a refund is being ordered.[29] Franchising

[27] For example, if the review period were 30 days, it is not nearly as likely that changes would occur necessitating amendments at the outset. But the farther out projections must be made, the more likely it is that intervening events might change those projections.

[28] NATOA Petition at 20.

[29] See Report and Order, MM Docket No. 92-266 (rel. May 3, 1993) at ¶377.

authorities, in contrast, only pay interest on any outstanding portion of the franchise fee starting on the date the operator completed implementation of the refund order.[30]

If the LFA were to pay interest for the same period as operators must pay interest they might have a point. But instead, LFAs pay interest over a much shorter time period than operators. As a result, lowering the interest rate to be paid on franchise fee refunds would not produce an equitable result.

G. The Commission Should Not Change Its Rules Regarding Notification of Filing Dates

Section 76.922(e)(1) provides that operators must give notice to their franchising authorities prior to their filing date under the annual rate increase method. Franchising authorities may reject the chosen filing date only for "good cause". If no agreement over the filing date can be reached, the rules give the LFA the right to set the filing date up to 60 days after the date originally chosen by the operator.

NATOA now argues that this provision does not give its members enough flexibility. It claims that operators will delay providing notice, "thus limiting the ability of the franchising authority to reject such date."[31] And it argues that having to show "good cause" for rejecting a filing date raises serious concerns. In order to protect against these imagined evils, NATOA proposes that all operators should give notice 45 days in advance

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[30] 47 C.F.R. §76.942(f).

[31] NATOA Petition at 20.

of their filing date, and that franchising authorities should have the unilateral right to reject that date, without cause.

This blatant attempt to further delay rate adjustments should be rejected by the Commission. As described above, the rules already provide franchising authorities more than adequate opportunities to attempt to reach an acceptable filing date, and a 60-day delay period as well. And it is hardly unreasonable to require that LFAs have a good reason -- other than just as a delaying tactic -- to reject a proposed date.

Moreover, imposing a 45-day advance notice requirement, particularly at this juncture, would cause unreasonable delays for operators. It would push back by a month and a half the effective date of any new basic rate increase. Such increases already have been thrown off cycle while awaiting issuance of the Form 1240. NATOA presents no reason for delaying it further.

H. Franchising Authorities Should Continue To Be Required To Issue Accounting Orders

NATOA urges the Commission to delete the requirement that franchising authorities must issue an accounting order at the end of the 60 day review period for new equipment introduced under the quarterly rate adjustment method.[32] NATOA claims that this requirement will cause "needless confusion."[33]

The Commission should adhere to its requirement. Operators should have certainty regarding the status of their rate review. An accounting order requirement has been part

[32] NATOA Petition at 22.

[33] Id.

of the rate review process since its inception, its value for both LFAs and operators in other contexts is beyond dispute, and there is nothing "confusing" about its use here.

II. THE COMMISSION SHOULD ADHERE TO ITS NEW "RATE IN PLAY" POLICY

The GMA Petition is directed to one discrete issue -- the Commission's policy to no longer review an operator's entire CPS rate in the case of a complaint regarding a subsequent rate increase. GMA argues that there are some cases in which subscribers and franchising authorities did not have the opportunity to complain about unreasonably high rates because no rate change occurred that would have opened a window for complaints. GMA therefore urges the Commission to reverse its policy or, in the alternative, to open up a new "window" for such complaints that would trigger an FCC review of the entire rate.[34]

The Commission should adhere to the sound policy of eliminating "rate in play" adopted in its Thirteenth Reconsideration Order. The Order recognizes that the previous policy of reviewing an operator's entire rate structure should be eliminated "because we find that continuing this policy creates an uncertain business environment for cable operators that have not had their CPSTs subject to rate regulation."[35] The Commission properly understood that this uncertainty has deleterious effects on operators, programmers and viewers.[36]

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[34] GMA's Petition suggests that the FCC "could permit franchising authorities a thirty-day window of opportunity to file a complaint without the requirement that the complaint must be triggered by a rate increase." GMA Petition at 3.

[35] Thirteenth Reconsideration Order at ¶163.

The Commission also recognized that over two years have passed since the initial date of regulation, and that operators should have finality with respect to the reasonableness of their CPS rates. Certainly, each subscriber and franchising authority had at a minimum 180 days in which to file complaints about initial CPS tier rates, and 45 days after any subsequent rate change.[37]

GMA, however, argues that some operators did not decrease their rates after the second round of FCC-imposed rate reductions, and therefore they and subscribers had no opportunity to file a complaint. They characterize this as a "loophole" in the rules.[38] This is not a "loophole", however, but the consequence of the statutory limitations of the FCC's jurisdiction over CPS rates.

GMA's Petition ignores the plain legal constraints on the Commission's ability to review the reasonableness of the entire CPS rate. Section 623(c)(3) of the 1992 Cable Act limits the time period for filing complaints to a 180-day window following the effective date of the initial rules, and, with respect to complaints thereafter, "within a reasonable period of time following a <u>change in rates</u> that is initiated after that effective date..."[39] As the Senate Report explains, "the FCC <u>may only act upon a complaint</u> that is filed within a

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36 <u>Id</u>. (This uncertainty "[m]ay generally discourage investment, without which operators may lack the resources to upgrade their networks, add new programming services, and provide new, innovative services.")

37 GMA argues that franchising authorities may not have filed during the initial 6 month window because they reviewed the rate calculations and found that they were correct. GMA Petition at 2. But that does not explain why a subscriber did not file during this time period. Presumably, subscribers were satisfied with the level of their CPS rates two years ago, and in the example used by GMA, those rates have not changed since.

38 GMA Petition at 2.

39 47 U.S.C. §543(c)(3) (emphasis supplied). The Commission in implementing this provision concluded that 45 days after a rate change was a reasonable time period.

reasonable time after a rate increase...."[40] The statute simply does not give the Commission authority to review a rate after the initial 180 day review period in the absence of a complaint about a rate change.

Moreover, had Congress desired that the Commission have continuing authority to review CPS rates without restriction, it would not have required a complaint mechanism to trigger FCC jurisdiction and would not have imposed a requirement that subsequent rate challenges must be filed "within a reasonable time." It certainly knew of this approach, for it adopted rate review by LFAs which is not conditioned by a complaint filing requirement.

In any case, GMA recognizes that "a positive, but unexpected, side-effect of the loophole in the rules has been that cable operators have avoided imposing rate increases for the CPSTs, because doing so would trigger a review of the entire rate ...."[41] As a result, the alleged windfall that GMA claims these operators have received is likely to be de minimis, if not non-existent. Operators whose rates were above the maximum permitted rate already will have foregone over a year's worth of external costs to which they were entitled -- such as inflation and increases in programming costs. Therefore, while GMA argues that these systems can "lock in" a "permanent overcharge" of 40 cents (in the example it gives), in fact there may be much less of a cost difference, if any difference at all, in the rates that may be charged now.

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40 S. Rep. No. 102-94, 102d Cong. 1st Sess. at 74 (emphasis supplied).

41 GMA Petition at 2.

Indeed, from May 1994 until September 1995, when the Commission articulated its rates-in-play policy, an operator had no assurance that its whole rate would not be in play and many operators, assumably, froze their rates during that period to avoid exposure to review of the whole rate. The Commission has recognized that rate freezes of this sort have occurred, and have led to lower rates for subscribers during the interim. For instance, in the Second Order on Reconsideration, similarly, the FCC denied transition relief systems inflation increases for many months, but eventually allowed these operators to resume an inflation adjustment. After so long a period of potential rate review, the FCC was correct in lifting the all rates in play cloud, just as it did in permitting transition relief systems their inflation adjustments. Yet under GMA's erroneous statutory interpretation, an operator's 1994 rate would be subject to review five, ten or more years later, even if it had frozen the rate all along, once a rate adjustment occurred.

Moreover, GMA's approach would impose significant burdens on all cable operators who have not received a complaint. But there are several reasons why a given operator may not have changed its rates during the relevant 1994-95 period -- not the least of which might be because its rates were already below the revised benchmark. These operators, though, would be penalized by GMA's approach, facing another round of rate complaints simply because they failed to change their rates previously. That sends the wrong message to subscribers -- that somehow their operator should be suspect for not raising its rates, or for not lowering them further.

For all these reasons, the Commission correctly decided to end its "rate in play" policy and to limit future rate reviews only to the reasonableness of the increases about which complaints are filed.

CONCLUSION

In the Thirteenth Reconsideration Order, the Commission attempted to streamline the rate review process, to the benefit of subscribers, cable operators, and government officials responsible for ensuring the reasonableness of basic and CPS rates. The NATOA Petition represents yet again an attempt by its members to create opportunities to unreasonably defer entirely lawful rate increases, and to tie cable operators up in bureaucratic red tape in order to take what the Commission at one point thought would be "automatic" adjustments. The costs of allowing NATOA to do so are borne not only by operators, but by subscribers as well. Instead of being able to provide new and improved services, operators will be forced to devote scarce resources to new paperwork burdens and administrative disputes.

NATOA's proposed changes are unjustified, and will demonstrably injure the Commission's goal of injecting more certainty and rationality into the rate regulation process. GMA's Petition would perpetuate the uncertainty faced by operators, and is contrary to the 1992 Cable Act. Their Petitions should be denied.

Respectfully submitted,

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